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COMMUNICATION FROM CUBA, DOMINICAN REPUBLIC, HAÏTI, INDIA, KENYA, PAKISTAN, PERU, UGANDA, VENEZUELA AND ZIMBABWE

Assessment of Trade in Services

The following communication has been received from the delegations of Cuba, Dominican Republic, Haiti, India, Kenya, Pakistan, Peru, Uganda, Venezuela and Zimbabwe with the request that it be circulated to the Members of the Council for Trade in Services.

1. This paper is intended to renew the call for an assessment of trade in services and looks at the following issues:

- (i) *The objectives of the GATS as stipulated in the Preamble and in Article IV and XIX, as well as the objectives set out in the preamble of the Marrakesh Agreement Establishing the World Trade Organisation.*
- (ii) *Secondly, it highlights reasons why assessment of the GATS continues to be so important, giving a brief outline of what we already know has been the effects of the GATS on developing countries so far.*
- (iii) *It then attempts to address the issues for an assessment by suggesting a comprehensive set of criteria by which an assessment can be conducted.*
- (iv) *Finally, the paper gives recommendations of a desired timeframe and mechanism for such an assessment to be carried out.*

INTRODUCTION

1. Article XIX.3 stipulates that for each negotiating round, negotiating guidelines and procedures should be established, and that for this purpose, 'the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV.'

2. As we know, such as assessment has not taken place even though developing country delegations, in the Services Council meetings have repeatedly underlined the importance of such an assessment for developing countries.¹

¹See statements repeatedly calling for an assessment in 'Assessment of Trade in Services: Compilation of Relevant Statements and Submissions made at the Council for Trade in Services', Background Note by the Secretariat, S/CSS/W/104, 28 September 2001.

3. In March 2001, the Special Session of the Council for Trade in Services adopted negotiating guidelines, which said that this Council shall continue to carry out an "assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and of Article IV in particular. This shall be an ongoing activity of the Council and negotiations shall be adjusted in the light of the results of the assessment."

4. Since March, however, there has been little, if any progress in assessment.

I. OBJECTIVES OF THE MARRAKESH AGREEMENT AND GATS

We would like to reiterate the commitment for an assessment. We therefore underscore the need to recall the objectives that have been set out for GATS and the WTO as a whole:

1. Objectives of the Marrakesh Agreement

- (a) The Marrakesh Agreement establishing the WTO recognised in its preamble that 'trade and economic endeavour should be conducted with a view to *raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand.*
- (b) Secondly, it also says that there is a need 'for *positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development*'.

2. The preamble of the GATS agreement also states the following:

- (a) That multilateral rules in services should take place under *conditions of 'progressive liberalisation and as a means of promoting the economic growth of all trading partners and the development of developing countries'*;
- (b) Negotiations should be 'aimed at *promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives*';
- (c) That the GATS should 'facilitate the *increasing participation of developing countries in trade in services and the expansion of their service exports*' 'through the *strengthening of their domestic services capacity and its efficiency and competitiveness*'.

3. GATS Article IV: Increasing Participation of Developing Countries, also sets out clearly the criteria of how participation should take place:

- (a) Article IV:1(a) states that developing countries' increasing participation in world trade should be facilitated by '*strengthening of their domestic services capacity and its efficiency and competitiveness, inter alia through access to technology on a commercial basis*';
- (b) Article IV:1(b) talks about increasing developing countries' participation through '*improvement of their access to distribution channels and information networks*';

- (c) And IV:1(c) refers to increasing developing countries' participation through 'the liberalisation of market access in sectors and modes of supply of export interest to them'.

4. Furthermore, Article XIX:2 also states that the 'process of liberalisation shall take place with due respect for national policy objectives and the level of development of individual Members... There shall *be appropriate flexibility for individual developing country Members for opening few sectors, liberalising fewer types of transactions, progressively extending market access in line with their development* and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV'.

5. The Preamble of the GATS agreement also underlines the issue that members have a right to 'regulate'... 'in order to meet national policy objectives'. It acknowledges 'the particular need of developing countries to exercise this right'.

6. All the above objectives and principles should therefore be guiding principles for the assessment of the GATS.

II. WHY ASSESSMENT CONTINUES TO BE CRITICALLY IMPORTANT

1. Developing Countries Have Not Received Benefits From Their Commitments

7. According to UNCTAD's 1999 Assessment, developing countries have made substantial commitments under GATS with respect to many service industries, often binding recently adopted legislation or pre-committing future policies without having had much experience in their implementation, and have undertaken a higher share of full bindings under the cross-border and commercial presence modes of supply. In contrast, they have not received concessions of any meaningful economic value under the movement of natural persons mode of supply.² As a result, most developing countries have a deficit in trade in services except in the areas of tourism and travel and worker remittances.³

8. Hoekman has also pointed out that 'market access commitments by high-income countries tend to be restrictive with respect to activities where developing countries have a comparative advantage – both low-and high-skill labour intensive activities that require either temporary entry or establishment or work permits'. Most members have only allowed entry of specialists and higher-level management staff, significantly curtailing the scope for cross-border (non-establishment related) trade in services.⁴

9. UNCTAD has also drawn the same conclusions, that developing countries do have potential to export services in the following sectors – through the movement of natural persons: professional, business services, health services, tourism, construction, audiovisual services, transport. However, they have received little concessions in these areas due to constraints imposed by the developed countries, such as economic needs tests etc. Lack of commercially meaningful commitments (except on intracorporate transferees) on the movement of natural persons, have created a major imbalance in trade.⁵

²UNCTAD 1999 'Assessment of services of developing countries: summary of findings', 26 August.

³UNCTAD 1999 *ibid.*

⁴Hoekman, B. 1996 'Assessing the General Agreement on Trade in Services', in the Uruguay Round and the Developing countries, W. Martin and LA. Winters (eds), Cambridge: Cambridge University Press.

⁵UNCTAD 1999 *ibid.*

10. In the same vein, a study by OECD on assessment of the GATS (submitted by Slovenia, Bulgaria, Czech Republic, Poland and Slovak Republic to the Council of Trade in Services⁶) concluded that 'Liberalisation of trade in services within the GATS has not brought about specific tangible results for transition economies.'

2. GATS' Implications and Effects on Domestic Regulation

11. The continuing concerns of developing countries regarding regulation also makes it compelling to have an early assessment:

12. Firstly, in the process of implementing GATS, developing countries spontaneously 're-regulated' to remove trade barriers in various areas. However, as alluded to above, this spontaneity has not been reciprocated to the same extent. Developing countries have clearly not received the benefits they thought they would. Developed countries continue to be heavily regulated in the form of maintaining trade barriers especially in several sectors of interest to developing countries. For example, technical standards and licensing in certain professional services, is used to effectively restrict entry by developing countries into the industry.

13. Secondly, the regulatory initiatives taken by developing countries would already seem to be having a negative impact on them since many developing countries have adopted regulations that have turned out to be more suited to the needs and level of development of services industries of the developed countries.

14. Furthermore, there is the danger that re-regulation as promoted in Article VI could in fact become de-regulation. The EC's Guide to GATS written for business, for example, says that 'The GATS reflects the basic belief of its Members in open economies, deregulation, fair market rules and the protection of the consumer'.⁷ Indeed, re-regulation in market-oriented ways, could be fundamentally incompatible with the requirement or the desire of many governments to provide basic public services for their people, especially since certain sections of their population may not be able to afford to pay market prices for these services.

3. Market Power of Services Corporations Dwarf, Even Wipe-out Developing Countries Small Suppliers

15. Many services markets are dominated by only a few large firms from developed countries and a number of small players. The top 20 service exporters are mainly from developed countries. In spite of GATS, developed countries account for 80% of world exports of services, and developing countries' share of services export is about 20%, even though they make up 90% of WTO membership.⁸ It is therefore difficult, if not impossible for developing countries, without the advantage of an early start, to catch up with the large firms. Developing country providers (mostly SMEs) face competition from large service multinationals with massive financial strength, access to the latest technology, worldwide networks and sophisticated IT infrastructure.

16. Liberalisation under these circumstances of unequal competition has aggravated the alarming divide in supply capacity between developed and developing countries. Since GATS, developing countries share in exports have increased only by 6% a large part of this is associated with the Asian countries' export of goods. However, during the same time, developing countries' services imports

⁶S/CSS/W/18, 5 December 2000, "Note on Assessment on Trade in Services in Certain Transition Economies", Communication from Slovenia, Bulgaria, Czech Republic, Poland and Slovak Republic.

⁷European Commission, 1998, 'GATS 2000: Opening Markets for Services', Brussels.

⁸International Trade Statistics 2000, by WTO Secretariat.

have increased by 15%. Assessments conducted at the national level have therefore not shown positive results. Malaysia, for example, has concluded that despite exporting services, and being a relatively open market, it is still suffering a trade deficit in services. In conducting their own assessment, the Malaysian authorities 'had not found that developing countries had benefited from services trade'.⁹ For developing countries with services sectors which are even less developed than Malaysia, liberalisation under conditions of such unequal competition has led to de-industrialisation, rather than economic growth.

17. Developing countries' small suppliers are also disadvantaged in other ways, such as through discriminatory access to information channels and distribution networks – eg. suppliers of telecommunications network may discriminate by excluding certain users, charging higher fees, or imposing restrictions on attaching equipment. An example is the display bias on CRS and GDS screens, which has restricted competition in the air transport sector.

4. Privatisation of Service

18. Under conditions of liberalisation, privatisation of services could very easily happen since foreign corporations which are more competitive are likely to enter the new market and take over from the local company. This could have consequences on access to basic services for those who may not be able to afford these commercial prices of services. According to Asbjør Eide, Norwegian expert on the Sub-commission on the Promotion and Protection of Human Rights, 'There are serious risks that, once privatised, international services will opt for the solutions that are most profitable and forget about the most vulnerable sectors of the population, given that privately-run services are not subject to the same democratic controls as public services'. He warned that there could be serious dangers if the states transfer their responsibilities to transnational service providers that lack a social conscience about the local communities.¹⁰

19. In addition, investments, when they come in, have often not been in sectors that could most benefit the host countries. Investors tend to flock to where there are already existing activities, rather than moving into new, greenfield sectors. For example, the major privatisation examples in developing countries have been in public utilities.

5. Marketisation and Commodification of Common/ Public Resources

20. For the rural sectors in many developing countries, these basic services may not even be provided by the state, but by communities and local authorities which use currently common resources, such as water, minerals, fuels. Through marketisation, previously available public goods are put out of reach of many when these are commodified in the process of privatisation. The experience of several developing countries with structural adjustment already shows that large segments of the population are having serious difficulties gaining access to basic commodities and services at prices they can afford.

III. MOVING BEYOND THE STALEMATE IN GATS ASSESSMENT

1. Many developing countries, at the time of the Uruguay Round were hesitant to negotiate GATS given the non-existence of statistics. However, they were reassured that the problem would be addressed with urgency and ways would be found to gather meaningful data, to match the directions

⁹Council for Trade in Services in Special Session, 26 May 2000, Note by Secretariat, S/CSS/M/3, and Council for Trade in Services, Report of the Meeting Held on 21 Sept 1999, S/C/M/39.

¹⁰Cited in SUNS 29 Aug 2001.

of trade data in goods. On the basis of these reassurances, GATS negotiations went ahead and developing countries made concessions.

2. To date, however, substantive assessment has continued to be stalemated. In large part, this is because too much emphasis has been placed on the difficulties to obtain statistics. Certainly, work underway to obtain the long desired break-down in balance of payments statistics, as well as accurate statistical information in the various modes of supply must continue.¹¹ However, it is time that urgent consideration also be given to other elements to assess the effects of GATS. There are indeed a broad range of elements on which an assessment could be made so as to complement the existing statistical information.

3. In accordance with the objectives outlined in Part I of this paper, the following is a list of issues/elements, by which evidence can be gathered to assess the GATS. This is by no means exhaustive, and work can continue to further define and refine this list.

(i) *General Economy:*

1. What has been the evolution of trade in services vis-a-vis the general economy since 1995? (This assessment could be done with the help of economic trends and other national indicators). Has GATS played any part in contributing to economic growth?
2. Has GATS brought about more employment?
3. Has GATS been instrumental in creating the promised synergies between trade in services and trade in agricultural and industrial sectors? Has there been growth in these due to GATS?
4. Have developing countries' economies become more diversified as a result of GATS?

(ii) *Trade in Services:*

1. Have developing countries, especially LDCs, secured a larger share of this growth in international services trade? Has trade in services, or services exports increased - horizontally and vertically?
2. Have developing countries' services suppliers been able to exploit opportunities offered in regional and international markets? Has GATS led to increased market access for developing countries' suppliers in sectors and modes of supply of export interest to them?
3. What has been the actual inroad and progress in terms of market share and market access for developed countries into the developing countries' markets?
4. Has GATS led to the 'strengthening' of developing countries' domestic services capacity, efficiency and competitiveness?
5. Has GATS strengthened developing countries' services capacity through greater access to technology? Have there been more dynamic technological advances in services sectors as a result of GATS in developing countries?

¹¹Efforts of the Inter-Agency Task Force should be supplemented by other international organisations.

6. Have developing countries' suppliers had more access to distribution channels and information networks?
7. Has the economic benefits of GATS been 'mutually advantageous' for developed and developing countries?
8. Have there been investments in new sectors in developing countries, or are investments in services flowing only to sectors which have already been developed?

(iii) *GATS Commitments / Rules*

1. To what extent have nationality, visa and residency requirements prohibited the movement of natural persons from developing countries since 1995? Has the same been true for the movement of natural persons from the developed countries into developing countries?
2. What is the extent of subsidies provided by developed countries to their services suppliers? In what sectors have these subsidies been granted, and how? To what extent are investment incentives available to developed countries' suppliers, and what is the trade distortive impact of this?
3. What has been the effect of MFN exemptions?

(iv) *Access to Basic Services*

1. Has GATS brought about greater access to basic infrastructure to a larger number of people (especially the poor), for example, water, energy, health care, transport etc? Has there been an increase or decrease in the standards of services provided especially to populations that are poor, vulnerable or socially disadvantaged?
2. Has GATS contributed to greater access to telecommunications and internet services by people in developing countries?
3. Has GATS led to an increase in privatisation of services? What has the impact been for the development of developing countries?

IV. TIME FRAME AND MECHANISM FOR AN ASSESSMENT

1. Once again, in March 2001, WTO members adopted the 'Guidelines and Procedures for the Negotiations on Trade in Services'. Paragraph 14 of the Guidelines states that

'The Council for Trade in Services in Special Session shall continue to carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and of Article IV in particular. This shall be an ongoing activity of the Council and negotiations shall be adjusted in the light of the results of the assessment.'

2. In order for such an assessment to be on-going, it should in the first place commence. It is therefore imperative that an assessment is conducted now in order to ensure that the negotiations proceed on an informed basis. Furthermore, since it is to be continuing, there is need for an objective framework for such an exercise to be conducted on a predictable and certain manner, and at the same time, making it meaningful for future assessments.

3. We therefore recommend that:

- (i) The first of such an assessment is carried out based on the comprehensive submissions made by member states and international organisations, including the WTO. Conclusions should be drawn based on these submissions by the end of March 2002, as a first contribution under the mandate given in Article XIX:3 as well as in Paragraph 14 of the Guidelines cited above.
 - (ii) Further negotiations may only commence after conclusions from this first assessment have been drawn. Negotiations should be adjusted in accordance with these conclusions.
 - (iii) In accordance with Paragraph 14 of the Guidelines, assessments of trade in services should remain an ongoing activity of the Council and conclusions should be drawn at regular intervals so that the negotiations can be adjusted accordingly.
 - (iv) Given the expertise and work of UNCTAD on issues pertaining to developing countries, these assessments should be carried out with the assistance of UNCTAD, and if necessary, other relevant UN agencies. Studies on national experiences can also be fed into this assessment process. Demand driven technical and financial assistance should be provided for this purpose to developing countries, especially the LDCs.
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